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Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Craig Kulesa

Petitioner

v.

Gregory F. Small and
Brenda Small

Respondents

On Petition For Writ of Certiorari To The State of Arkansas Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

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501-282-0034

June 21, 2005

QUESTIONS PRESENTED

1. How and to what extent does The Soldiers' and Sailors' Relief Act, Title 50 of the United States Code Appendix, protect servicemen that fail to pay their real estate obligations.

2. Whether the Arkansas Court of Appeals can claim the respondents contested the validity of a tax sale when the respondents never made any such contest.

PARTIES TO THE PROCEEDING

Aside from those named in the caption, there are no other parties to the proceeding.

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OPINION BELOW

On February 23, 2005 the Arkansas Court of Appeals rendered an opinion in this case. DIVISION IV CA04-342 GREGORY F. SMALL and BRENDA SMALL APPELLANTS V. CRAIG KULESA APPELLEE AN APPEAL FROM GARLAND COUNTY CIRCUIT COURT [CV03-454-III] HON. DAVID B. SWITZER, JUDGE, REVERSED AND REMANDED WITH INSTRUCTIONS. It is reprinted in the appendix

hereto. The issue for which the Petitioner seeks certiorari is contained in paragraphs 7 & 10 of the Opinion.

JURISDICTION

The State of Arkansas Court of Appeals;
Heard this case on January 19, 2005.
Decided this case on February 23, 2005 .
Denied Rehearing on March 23, 2005.

The State of Arkansas Supreme Court;
Denied Review on April 14, 2005.

The original Petition for Writ of Certiorari was mailed to this court on June 21, 2005 via Express mail, certified, return receipt. The additional 40 copies were mailed on June 28, 2005 and were marked received on July 6, 2005.
Per letter from the Clerk of this court, William K. Suter By: Gail Johnson Dated July 7, 2005, this revised Petition for Writ of Certiorari was mailed within 60 days from the date of the letter of the court. Rule 14.5.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a)

RELEVANT STATUTORY PROVISIONS

I. Title 50 of the United States Code Appendix, section 525 (2000)
The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission,

department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.2

II. 11 U.S.C. 501 et seq, at § 520 (4)
If any judgment shall be rendered in any action or proceeding governed by this section against any person in the military service during the period of such service or within thirty days thereafter and it appears that such person is prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application made by such person or his legal representative, not later than ninety days after termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside or reversing any judgment because of any of the provisions of this act [11 U.S.C.A. Appx. § 501 et seq] shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.

III. Arkansas Code Ann. § 26-37-203 (Supp. 2003)
(a) If the tax-delinquent land is not redeemed within the thirty-day period, the Commissioner of State Lands shall

issue a limited warranty deed to the land. (b)(1) Except as provided in subdivisions (b)(2) and (3) of this section, all actions to contest the validity of the conveyance shall be brought within two (2) years after the date of the conveyance or thereafter be barred. (2) Causes of actions by persons suffering a mental incapacity, minors, or those serving in the United States armed forces during time of war during the two-year period shall be brought within two (2) years after the disability is removed, the minor reaches majority, or the person is released from active duty with the armed forces.

STATEMENT OF THE CASE

This case concerns the application of The Soldiers' and Sailors' Relief Act, Title 50 of the United States Code Appendix, to servicemen who are on active duty in the military, during which time, have defaulted on paying their real estate taxes and obligations. The Arkansas Court of Appeals gives the career serviceman an unwarranted weapon not intended by the act. Furthermore, the Arkansas Court of Appeals goes so far as to claim the respondents contested the validity of a tax sale when the respondents never made any such contest.

I. Forfeiture for failure to pay taxes

From May 25, 1979 to December 31, 2002, the separate respondent, Gregory F. Small, was on active duty in the United States Air Force as a career military officer.

On December 13, 1993, Respondents purchased the below described real property:

Lot #2907 Section "Q" Diamondhead Subdivision located in Garland County Arkansas. (a vacant lot)

The Respondents failed to pay property taxes from 1994- 1998. In accordance to (Arkansas Code Ann. § 26-37-101) the property was forfeited to the State Land Commissioner.

On May 4, 1999, the property described above went to public auction and was not sold.

Based on the Petitioners' offer to purchase, accepted by the commissioner of State Lands on July 17, 2000, the Commissioner issued a Limited Warranty Deed to the Petitioner on August 18, 2000, as a result of Respondents' failure to pay their real estate taxes or redeem within thirty days, In accordance to [Arkansas Code Ann. § 26-37-203 (a) (Supp. 2003)].

II. Free and Clear

On March 23, 2001, the Petitioner filed a Petition to Quiet title to the subject lands (case number 2001-331-I in the Chancery Court of Garland County, Arkansas).

Consequently, a Default Judgment to Quiet title was entered in favor of the Petitioner on May 17, 2001, by the Honorable David B. Switzer, Chancery Judge.

On December 31, 2002, separate respondent, Major Gregory F. Small left the military.

It is important to point out that the separate respondent left at this time because this is when The Soldiers' and Sailors' Relief Act, Title 11 of the United States Code Appendix, Section 501 et seq, at § (520) (4) would come into effect for this case.

Therefore, on January 30, 2003 the Respondents' chance to " redeem " the property ended. (Thirty days after separate respondent, Major Gregory F. Small left the military on December 31, 2002).

The Respondents Failed to timely Redeem the property even under the Soldiers' and Sailors' Relief Act.

III. Respondents' Complaint

On May 7, 2003, the Petitioner filed a Complaint to Quiet Title against Craig Kulesa the Petitioner, and a motion to Set Aside the Judgment of Kulesa's Quiet Title.

During the trial, the Petitioner used [(U.S.C. § 520) (4)- Application to set aside a default judgment must be made 90 days after the termination of such service.]

The Respondents' window to set aside the Petitioner's Default Judgment expired as of April 1, 2003, ninety days after Major Small's separation from the service.

The trial Court ruled the Petitioner's Motion for Summary Judgment be granted on the basis of two issues.

One being, if the Petitioners' service was proper, and the Court found that it was. The other being, weather the Respondents' were accorded protection by the Soldiers' and Sailors' Relief Act. The Court found that Respondent, Brenda Small, is accorded no relief and Respondent Gregory F. Small failed within the time provided in the act to avail himself of relief.

IV. Respondents' Appeal

On Appeal to the State of Arkansas Court of Appeals, the Respondents' stilled pursued the fact that they could set

the Petitioners Quiet Title aside, even though by the Respondents' own admission, was separated from the armed services in December 31, 2002, and did not make any application to set the Quiet Title Decree, rendered in favor of Petitioner, Until May 7, 2003, more than four months after his separation, and therefore not eligible for relief under the Soldiers' and Sailors' Relief Act.

In addition, the Respondents' also pursued the idea that the Petitioner did not effect proper service during his March 23, 2001 Quiet Title, in spite of the lower Court finding that he had.

Again, the Respondents continued to try to ONLY SET THE PETITIONERS' QUIET TITLE ASIDE and in turn QUIET TITLE IN THEIR NAMES.

In response, the Petitioner reiterated the fact that the Respondents' were clearly out of the statute of limitations to set his March 23, 2001 Quiet Title aside per [(U.S.C. § 520) (4).

Petitioner also stood firm of the Lower Courts decision that he perfected proper service on the Respondents.

V. Dangerous Precedent

Reversed and Remanded. In the State of Arkansas Court of Appeals' Opinion, The lower Courts' decision was reversed and remanded under the The Soldiers' and Sailors' Relief Act, Title 50 of the United States Code Appendix, Section 525 (2000) which was misconstrued by the Court.

The appellate court stated in its' opinion on February 23, 2005, *in paragraph 10 that*;

Section 525 of the Act clearly provides that any period of limitations was tolled while Mr. Small was in

military service. Thus, the limitations period did not begin to run until his military service was completed. *See also Eubanks v. Zimmerman*, 255 Ark. 53, 498 S.W.2d 655 (1973) (citing *Diamond v. United States*, 170 Ct. Cl. 166, 344 F.2d 703 (1965)) (noting that the benefits of the Act end upon leaving the service). **Mr. Small was in the military until December 31, 2002; therefore, any period of time for any action under the law should start on that date. Until Mr. Small's military service ended, the Smalls' land could not be forfeited for failure to pay taxes (EMPHSIS ADDED)** . The Smalls acted within the two-year statute of limitations for contesting the validity of a tax conveyance. *See* Ark. Code Ann. § 26-37-203(b) (Supp. 2003). Therefore, the court erred in granting Kulesa summary judgment

AND AS STATED in paragraph 7 of the same c[illegible]nion;

The Respondents argue that they are entitled to relief under the Soldiers' and Sailors' Civil Relief Act. We agree. Title 50 of the United States Code Appendix, section 525 (2000) provides:

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period